

August 2, 2011

TRANSPORTATION COMMITTEE REPORT

A Transportation Committee meeting was held on Tuesday, August 2, 2011 at 4:30 p.m. in the County Administration Building, Quorum Court Meeting Room, 215 East Central, Bentonville, Arkansas

Committee Members Present: Douglas, Hawkins, Harrison, Curry, King, Blaty

Others Present: JPs Sandlin, Allen, Jones, and Moore, County Judge Bob Clinard, County Attorney George Spence, Administrator of Public Service Gary Black, Administrator of General Services Elizabeth Bowen, Administrator of Public Safety Marshal Watson, Comptroller Richard McComas, Grants Administrator Richard Redfearn, Director of Emergency Management Robert McGowan

Media: Tom Sissom - Daily Record, Kyle Hill - KURM Radio

JP Douglas called the meeting to order at 4:30 p.m.

Steve Ferguson of Lowell requested a status update on Blueberry Lane, Cooper Drive, and Lakewood Drive and the county's maintenance plans for the second district.

Carol Christoffel of Lowell requested information on the process which led to Blueberry Lane, Cooper Drive, and Lakewood Drive being changed to private road status and asked that they be changed back, along with the road signs which now indicate that they are private roads.

1) Appropriation Request: 2011 Fall Countywide Cleanup

Administrator of Public Service Gary Black reported that the Spring Cleanup was very successful, with a total cost of \$30,000 for chemical disposal and other items such as having the dumpsters available. He said a Fall 2011 Cleanup has been scheduled for Saturday, October 1, 2011, with some changes planned that will make the process move along more efficiently for the public. He added that since Highway 102 is finished out to the Road Department, some of the traffic flow problems will hopefully be alleviated.

Gary Black stated that since the Solid Waste District has volunteered to cover the cost of the chemical disposal, which was nearly \$20,000 at the Spring Cleanup, they are requesting an appropriation of \$10,000 to move ahead with the Fall Cleanup.

JP Curry made motion to forward an appropriation ordinance request to the August 2, 2011 Finance Committee agenda, seconded by JP Blaty.

Motion passed by unanimous show of hands vote.

2) Discussion: County Road Maintenance

County Judge Bob Clinard stated that he would like to review several state laws and county ordinances dealing with road maintenance.

Regarding Blueberry Lane, he explained that he had signed a court order on May 21, 2011 changing the status of several roads in the area east of Lowell from county-maintained to private, based on information that he received from the road department indicating that the county had not performed any maintenance work on them for the past 8 years. He said that after he received complaints from people who live in the area, he went and looked at the roads, and it seemed apparent to him that they were, in fact, county roads. He said that there were several asphalt patches that apparently did not get recorded in the Road Department's maintenance logs.

Judge Clinard stated that the decision has been made to change some of the roads back to "green-signed" roads, including Bonnie, Bobwhite Trail, Lakewood Drive, Tyson Road, Blueberry Lane, Cooper Drive, and there will be discussion later concerning exactly what "county maintenance" means.

Judge Clinard referred to several sections of Arkansas statutes which give authority and control of maintenance over county roads to county judges. He said the County Judge is responsible for administering the policy of how county roads will be maintained, and explained that county roads are defined as those acquired by the county or declared to be county roads by the County Judge. He said that the act of performing maintenance alone does not designate a road as a "county road", but some other action by the County Judge is required.

Judge Clinard stated that there are hundreds of roads in the county which have "green signs" designating them as county roads, but there has never been any action taken by a county judge to designate them as such, and that needs to be cleaned up. He said the County Judge in Baxter County had published a list of roads that had not been designated, held public hearings, and when everyone was in agreement, did a single court order to designate all the roads on the list as county roads.

Judge Clinard stated that in 1983, an ordinance was adopted which implemented the colored-sign designations, and it is very vague and was passed with no basis in state law. He said that state law defines roads as either county roads or private roads, and he has been told that the roads were given the different color designations to assist the road grader operators as they were out in the county doing maintenance. He listed some of the problems with the colored sign designations, and stated that after discussing it with County Attorney George Spence, he thinks that a clearer understanding is needed concerning how much maintenance the public can expect to be performed.

Judge Clinard stated that the Road Department has not intentionally delayed the work to be performed on the area east of Lowell, but it opened up a Pandora's box of other similar situations in the county that need to be addressed, specifically an area around Monte Ne.

JP Curry stated that he does not care if the signs are pink, and asked if the county is not obligated to provide some level of maintenance for these roads. Judge Clinard stated that the county is not obligated, according to state statutes, because there is no record of any action ever having been taken to declare these roads to be "county roads", other than some maintenance, which alone does not cause a road to become a "county road".

Discussion was held concerning the method by which county roads were designated as such in the past, and the lack of accurate records of maintenance performed. JP Sandlin noted that approximately 15 years ago, all rural subdivision plats were reviewed and signed by the County Judge, either accepting the road for maintenance purposes or not. She said those should still be on file in either the Circuit Clerk or Assessor's Offices. Judge Clinard noted that there is also some confusion regarding the roads in the Talamore Subdivision, because part of them have been accepted, and part have not.

Discussion was held regarding the County Judge's authority to set the level and frequency of maintenance on county roads. Judge Clinard noted that they are currently following a policy that has been in place at various time in the past, in which adjacent landowners pay for the paving materials, and the county provides the labor, and that is a very good deal for the county if it is a connector road or any road with high traffic volume. Judge Clinard stated that he and his staff are in the process of developing a plan which they will bring back to the committee. He said that they first have to determine whether the road is a county road or private road, and if it is a county road, the County Judge will determine the level of maintenance on it, but they should have some system in place to determine priority.

Discussion was held concerning the County Judge's constitutional authority over the county road system and how to determine the level of maintenance to be performed on the roads.

JP Moore suggested doing away with the blue signs which indicate that a road is to be graded twice a year, and only using sign colors to indicate whether it is a county road or private road.

3) Discussion: Lake Road Access

County Judge Bob Clinard reported on a meeting which was recently held at Martin's Bluff between the Sheriff's Department and the Corps of Engineers, concerning the problem with county roads which are close to the lake. He said visitors to the lake park alongside the roads, causing traffic problems and leaving behind a lot of trash, which causes problems for people who live in the area. He said a few weeks ago, one road in the Martin's Bluff area became completely blocked off to the point that residents in the area could not get to their homes. He said several options were discussed, including closing off the road, but the county has made the choice to paint fire lane markings in the area, so that people cannot park there. He said they will increase signage in the area, and the Sheriff's Office has agreed to step up patrols to try to discourage people from parking on the road. He said it is has been an ongoing problem for several years, noting the unsanitary conditions that are caused by the absence of trash or restroom facilities. He added that local residents have called the Sheriff's Department, but there is only one deputy covering the entire southeast area.

4) Discussion: Retro reflectivity Signs

County Judge Bob Clinard stated that he feels this issue has been adequately discussed, but wanted to report that JP Douglas has spoken to the Joint House and Senate Transportation Committee concerning what they feel is an unfunded mandate. He added that this issue was also discussed at the recent Association of County Judges, and everyone is aware of it. He said this affects every street sign in the United States, and will cost millions of dollars to replace them all. He said that a bill has been filed in the U.S. House of Representatives to repeal the law.

Judge Clinard added that for now, Benton County will comply with the new requirements only when replacing a sign, and they will have their plan for compliance in place by January of 2012, as they are required under the current law.

JP Douglas reported that the resolution urging repeal of the mandate has been sent to the congressional delegation as well as President Obama.

5) Road Grader Purchase

Administrator of Public Services Gary Black stated that as previously discussed at the previous Transportation Committee meeting, the Road Department needs to purchase nine road graders. He said that the trade-in value has been established at \$700,000 for seven of the graders, and the

other two have been valued at a total of \$100,000, noting that these values will continue to decline as time passes. He said each road grader will cost up to \$245,000, which is a high-end estimate, for a total of \$2.2 million, minus the \$800,000 for the trade-in value, for a total appropriation of \$1.4 million. He said they have the option of a three-, four-, or five-year buy-back program, which should have been continued in recent years to avoid having the road equipment getting in such bad shape. He said they are asking that the committee send a recommendation to the September 6, 2011 Finance Committee meeting to send the purchase out to bid. He said that once the nine graders are purchased, that will bring the total number to 22, 19 of which are used daily on road maintenance. He said the other three are categorized as "construction" road graders which are used when building roads, and are the oldest graders in the fleet. He said that they need to purchase three new graders each year beginning in 2012, in order to keep the fleet in good condition. He said if they decide to participate in the buy-back plan, they will trade in three graders each year, and will avoid having to make such a major expenditure to replace so many graders all at once. He noted that no road graders have been purchased for the last five years, and the dealers they have spoken with are expecting a price increase in 2012.

JP Curry asked if the county has considered leasing instead of purchasing the equipment. Comptroller Richard McComas stated that the buy-back program is very similar to leasing.

JP Jones asked how often the road graders are out of service for maintenance. Gary Black stated the buy-back program requires a regular schedule of maintenance to be performed on the equipment and verified by the supplier, noting that most of the vendors are familiar with the county's used equipment, and like to purchase it because it has been well maintained.

JP Jones asked what the county's percentage of return on the purchase price is. County Judge Bob Clinard explained that the advantage of purchasing the equipment rather than leasing it is that the county is exempted from the excise tax, which would be approximately \$35,000 to \$40,000 on a \$240,000 purchase. He said that the county could get as much as 70% to 80% of the purchase price back on the buy-back program.

JP Hawkins made motion to authorize the County Judge to send the purchase of nine road graders out to bid, and to forward to the Finance Committee, seconded by JP Curry.

Motion passed by unanimous show of hands vote.

6) Benton County Nuisance Abatement Ordinance

County Judge Bob Clinard showed pictures of dilapidated, falling-down, nuisance structures that are frequently encountered by the county's Environmental Officers. Judge Clinard stated that he wanted to inform the committee that the county intends to enforce Ordinance No. O-2009-19, which is taken nearly verbatim from the Arkansas State Code. He said several property owners have been contacted and the property in question has been posted, but the county has received no response from the owners. He said the ordinance states that once the proper procedures of notification have been followed, the county may clean up the property at the owner's expense, and then place a lien on the property if the owner does not pay for clean up. He said several of the properties have been used for meth labs, they are a blight on the county, and he believes they need to start enforcing the ordinance. He said he expects there will be some criticism, and noted that some of the structures will fall under Ordinance O-2009-19, which

allows for the controlled burning of dilapidated structures once an asbestos inspection has been performed by the Benton County Fire Marshal.

He said this is a safety issue in the county, the ordinance needs to be enforced, and he will be taking this issue to the Public Safety Committee. He said that he wanted to notify the Transportation Committee because if a cleanup has to be performed, it will involve Road Department employees and equipment, in addition to the possible use of some inmate labor. JP Hawkins asked if the cost would be taken from County Road funds or County General. Judge Clinard stated that they will probably look at adding a line item to the Road Department's 2012 budget to allow for some Environmental cleanup.

JP Douglas asked if it is the Environmental Officers who make the determination on the structures in question, and stated that the ordinance does not contain a process allowing the property owners to appeal the decision. Judge Clinard stated that the ordinance may need to be tweaked to allow for such a process, but this is not something that will happen this month. He said that County Attorney George Spence is looking into amending the ordinance to allow for an appeal process, in addition to adding the ability for the county to attach a lien to the property owner's tax bill, as the cities do.

County Attorney George Spence stated that they will proceed very cautiously in moving forward with this, and he is also preparing some information for the Legislative Committee concerning the need to clarify the state statute on which this ordinance is based. He said it needs to include some additional protection for property owners, and to hopefully make it easier for the county to collect payment for the work it has to perform.

JP Allen asked if there are clear-cut definitions as to what constitutes a nuisance. JP Moore stated that during the drafting of the ordinance, several versions were considered, one of which contained an appeals process, along with a hierarchy of various officials who would make the determination of the severity of the nuisance; but for political reasons, the Quorum Court eventually adopted the state statute in its entirety.

Adjournment

After motion and second the meeting adjourned at 5:40 p.m.